ABD RASHID ABDULLAH & ANOR A

v.

PP

HIGH COURT MALAYA, PULAU PINANG B
ZAMANI A RAHIM J
[CRIMINAL APPEALS NO: 42S-91-2011 & 42A-93-2011]
15 MARCH 2012

CRIMINAL PROCEDURE: *Charge - Defective charge - Whether charges incurably defective for failing to state main ingredients of offence - Whether material evidence or facts disclosed supported charges - Criminal Procedure Code, s. 422 - Anti-Corruption Act 1997, s 11(c)* C

The first appellant ('Abd Rashid') was a technician with the Public Works Department ('PWD'). He was responsible for supervising the D scope and details of works carried out by the second appellant ('Ramli'), a Class F contractor, in a respect of a PWD fence-repair and rehabilitation project. Abd Rashid was responsible for particularising the works that were to be done by Ramli and certifying that, based on his personal inspection, they were satisfactorily completed to support Ramli's claim E for payment. In the instant case, Ramli and Abd Rashid were charged under s. 11(c) of the Anti-Corruption Act 1997 - the former for submitting a false claim and the latter for abetting him in the commission of the offence. The Sessions Court found both men guilty as charged and sentenced them to four years' jail and imposed a fine. The duo appealed F to the High Court against conviction and sentence arguing that the charges against them were incurably defective.

Held (allowing appeals; setting aside convictions and sentences; acquitting and discharging appellants):

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(1) The charge against Abd Rashid failed to state that he was an agent of the Government of Malaysia, to wit, a technician with Jabatan Kerja Raya, Seberang Perai Utara. There was also a failure to incorporate in the charge the words 'knowingly used with intent to deceive his principal', which was the *mens rea* element of the offence H and an omission to recite the statement which was false in material particulars, namely, his certification in support of Ramli's application for final payment that the works particularised in the application had been satisfactorily completed. The charge was fundamentally defective and incurable under s. 422 of the Criminal Procedure Code. (para 27) I

(2) The charge against Ramli wrongly stated the agent of the Government of Malaysia to be one 'Mazlina bt Pahazir, Pembantu Tadbir Kewangan yang bertugas di Jabatan Kerja Raya, Seberang Perai Utara' when it should have been 'Jurutera Daerah, Jabatan Kerja Raya, Seberang Perai Utara' who was the one who authorised Ramli's claim for payment. The charges against both appellants also did not disclose the falsity concerning the posts of the fence project. Thus, the material evidence or facts disclosed did not support the charges. (paras 28 & 29)

Case(s) referred to:
Aw Yang Kee Chuan lwn. PP [1992] 2 CLJ 979; [1992] 1 CLJ (Rep) 398 HC ***(refd)***
Ibrahim Helmi Mohd Liki v. PP [1984] 2 CLJ 46; [1984] 2 CLJ (Rep) 71 HC ***(refd)***
Lim Hong Siang v. PP [2009] 2 CLJ 88 HC ***(refd)***
PP v. Mohamad Sabin [2011] 4 AMR 205 ***(refd)***
PP v. Mohd Azam Basiron & Anor [2010] 9 CLJ 1 CA ***(refd)***

Legislation referred to:
Anti-Corruption Act 1997, ss. 2, 16, 11(c), 20(1), 47, 61
Criminal Procedure Code, s. 422
Prevention of Corruption Act 1961, s. 4(c)

For the prosecution - Ahmad Ghazali, DPP
For the 1st accused - RSN Rayer; M/s R Nethaji Rayer & Co
For the 2nd accused - Abdul Samad Khalid; M/s Badrul, Samad, Faik & Co

Reported by Ashok Kumar

JUDGMENT

Zamani A Rahim J:

[1] Abd Rashid bin Abdullah @ Abu, OKT1, a technician with Jabatan Kerja Raya, Seberang Perai Utara was charged for abetting the commission of an offence by Ramli bin Bakar, OKT2, that is, the offence under s. 11(c) of the Anti-Corruption Act 1997 ('Act 575') read together with s. 20(1) of Act 575. The charge reads as follows:

Charge Against OKT 1

Bahawa kamu dalam bulan Julai 2005 di Pejabat Jabatan Kerja Raya, Seberang Perai Utara, di dalam Daerah Seberang Perai Utara, dalam Negeri Pulau Pinang, telah bersubahat dengan Ramli bin Bakar, yang dengan disedari telah memberikan kepada seorang agen Kerajaan Malaysia iaitu Mazlina binti Pahazir, seorang Pembantu Tadbir Kewangan Jabatan Kerja Raya yang mana prinsipal Mazlina binti Pahazir mempunyai kepentingan mengenainya dan yang mengandungi

butir matan palsu iaitu menuntut item no. 14 dan 15 iaitu panjang pagar yang terdapat pada borang JKR-4 Pind 1/83 itu ialah 405 meter bernilai RM11,323.80 sedangkan ukuran sebenar panjang pagar itu ialah 162.2 meter dan item no. 16, 17 dan 18 berkenaan tiang pagar bernilai RM28,979.26 di mana nilai sebenar adalah RM6,826.02 yang pada pengetahuan kamu adalah untuk mengelirukan prinsipal kamu yang mana kesalahan tersebut telah dilakukan akibat dari pensubahatan kamu dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 11(c) Akta Pencegahan Rasuah 1997 yang boleh dihukum di bawah Seksyen 16 Akta dan dibaca bersama Seksyen 20(1) Akta yang sama.

[2] Ramli bin Bakar, OKT2, a class F contractor was charged with an offence under s. 11(c) of Act 575 and the charge reads as follows:

Charge Against OKT 2

Bahawa kamu dalam bulan Julai 2005 di Pejabat Jabatan Kerja Raya, Seberang Perai Utara, di dalam Daerah Seberang Perai Utara, di dalam Negeri Pulau Pinang, dengan disedari telah memberikan kepada seorang agen Kerajaan Malaysia iaitu Mazlina binti Pahazir, seorang Pembantu Tadbir Kewangan yang bertugas di Jabatan Kerja Raya Seberang Perai Utara satu dokumen iaitu Borang Butir-Butir Kerja JKR-4 Pind 1/83 yang mana prinsipalnya mempunyai kepentingan mengenainya dan yang mengandungi butir matan palsu iaitu kamu telah menuntut no. 14 dan 15 iaitu panjang pagar yang terdapat pada borang JKR-4 Pind 1/83 itu ialah 405 meter bernilai RM11,323.80 sedangkan ukuran sebenar panjang pagar itu ialah 162.2 meter dan item no. 16, 17 dan 18 berkenaan tiang pagar bernilai RM28,979.26 di mana nilai sebenar adalah RM6,826.02 yang pada pengetahuan kamu adalah untuk mengelirukan prinsipalnya dan dengan itu kamu telah melakukan kesalahan di bawah Seksyen 11(c) Akta Pencegahan Rasuah 1997 yang boleh dihukum di bawah Seksyen 16 Akta yang sama.

[3] Originally OKT1 and OKT2 were separately charged but jointly tried. At the end of the entire trial, both OKT1 and OKT2 were found guilty and convicted as charged. Each of them was sentenced to four years imprisonment from the date of conviction (ie, 7 October 2011) and a fine of RM144,709.65 in default four months imprisonment.

Prosecution Evidence

[4] The prosecution evidence against OKT1 and OKT2 may be summarised as follows.

[5] OKT1 was a technician attached at Jabatan Kerja Raya (JKR), Seberang Perai Utara, Penang and OKT2 was a class F contractor (see exh. P7).

[6] OKT1's function was, *inter alia*, to supervise the scope and details of works carried out by the contractor in respect of JKR project. OKT1 was also responsible to certify the works that had been carried out by the contractor. This certification by OKT1 was based on his personal inspection of the works done and in this case, it can be seen in para. F at p. 3 of Borang Permintaan Kepada Jabatan Kerja Raya Untuk Melaksanakan Kerja (Borang JKR-4) exh. P3 which read as follows:

> Saya memperakui bahawa keseluruhan kerja yang dibutirkan di dalam permohonan ini telah diperiksa dan didapati siap dilaksanakan dengan sempurna dan memuaskan, dan dengan ini menyokong pembayaran berakhir berjumlah RM59,336.46.
>
> | | |
> |---|---|
> | Pegawai Rendah Yang Bertanggungjawab | OKT1's T.T. |
> | Dated: 4.7.2005 | Abd Rashid bin Abdullah @ Abu |
> | | Juruteknik Awam |
> | | JKR, Seberang Perai Utara |

[7] Borang Permintaan Jabatan Kerja Raya Untuk Melaksanakan Kerja (Borang JKR-4) exh. P3 was the soul of the prosecution's case.

[8] The above certification was for the purpose of supporting the OKT2's claim herein. OKT1 was also responsible to particularise the works, including the number of units, quantities and prices as stipulated in the respective columns in exh. P3 at pp. 4, 5, 6, 7 and 8. In other words, OKT1 was responsible for every details of works carried out by the contractor, OKT2.

[9] For payment of the claim submitted by OKT2, the details of the works at pp. 4, 5, 6, 7 and 8 of exh. P3 must be corresponded or tallied with the actual works performed by the contractor at the work site. In this case, OKT1 was responsible to supervise the maintenance and repair of the fence of Pejabat Pertanian Bumbung Lima, Seberang Perai Utara ('the project') which was in poor and dilapidated conditions.

[10] Whilst OKT2 had undertaken to carry out the project which he had agreed to comply with the terms and conditions as contained in sub-paras. 1, 2, 3 and 4 of para. 6 at p. 2 of exh. P3. Sub-paragraph 3 stated *inter alia*, "Keseluruhan kerja ini akan diukur semula setelah siap dilaksanakan dan jumlah pembayaran akan dilaraskan dengan wajarnya."

[11] OKT2 had to perform the works in accordance with the specifications and descriptions duly prepared by OKT1 as stated at pp. 4, 5, 6, 7 and 8 of exh. P3. Upon completion, OKT1 would

re-examine the whole works and to make the necessary certification as stated above in para. F of exh. P3. To back up his claim, OKT2 had submitted an invoice, P4.

[12] SP3 was another JKR technician employed in the same section with OKT1. SP3 confirmed that the particulars at pp. 4, 5, 6, 7 and 8 of exh. P3 were written by OKT1 as SP3 was familiar with OKT1's handwritings. On the instruction of a district engineer, SP4, SP3 together with an assistant technician, Encik Azmi bin Murad (since deceased) on 6 October 2006 had gone to the work site of the project to take the necessary measurements of the fence and counting of the posts which were said to be duly completed by OKT2. Upon measuring the fence, the length was found to be 162.2 metres and its total number of posts erected were 60 posts. Whereas at p. 6 of exh. P3, the length of the fence and its chain-link wire (items 14 and 15) that were claimed was 405 metres and the total number of posts that were claimed were 215 posts, including the digging of holes to erect the posts (item 17) and to mount the concrete base of the posts (item 18) which were totalling 215 posts. After making a re-count, the total number of the posts appeared to be replaced were 60 posts. A remeasurement and re-counting were done by SP3 as shown in exh. P10 and photographs, P11.

[13] The JKR of Seberang Perai Utara was headed by the district engineer, SP4. SP4's function was *inter alia*, to approve the payment of claims made by contractors, including the claim by OKT2 in this case. According to SP4, one Azmi bin Murad (since deceased) was an assistant technician under the supervision of OKT1. The late Azmi bin Murad's function was to assist OKT1 to supervise the works such as its scope, quantities, prices etc. In para. E at p. 3 of exh. P3, the late Azmi's role was also to acknowledge the receipt of exh. P3 from OKT2 and further his concurrent endorsement at the bottom of p. 8 of exh. P3 together with OKT1 pertaining to the works duly completed. SP4 explained that the late Azmi was not involved in the determination of quantities and prices of items at pp. 4, 5, 6, 7 and 8 of exh. P3. SP4's evidence was corroborated by the evidence of SP3 who confirmed that it was OKT1's duty, as a technician, to inspect the details of works at the work site, to take actual measurements before making his final certification. It was not the duty of the late Azmi to make such certification as he was only an assistant to OKT1.

[14] Mohamad Rafi, SP2 was a supervisor of the project appointed by OKT2. SP2 said he worked at the work site from its commencement until the completion of the whole project. According to him, it was

A OKT1 who directed him to the location and the fence which needed to be repaired or replaced. SP2 also said that OKT2 had purchased merely 12 rolls of chain-link fence and all of which had been utilised. SP2 further confirmed that no new posts were supplied contrary to what were stated in item 16. And no works were carried out as mentioned in
B items 17 and 18. The works done were merely to install and repainted the existing posts so that they would look new.

[15] SP1 was a JKR financial clerk who attended to the claim by OKT2 based on an invoice, P4. She had prepared the payment voucher, P2 and the payment of RM59,336.46 was remitted to OKT2's bank
C namely, Bank Rakyat, Cawangan Baling. The Bank Rakyat manager, SP6 confirmed that the bank had received the payment from JKR. Having deducted OKT2's loan with the bank, the balance was paid to OKT2.

D **The Law And Specimen Charge Under s. 11(c)**

[16] The offence of s. 11(c) of Act 575 under which OKT1 and OKT2 were charged reads as follows:

> 11. If:
>
> E
>
> (a) …
>
> (b) …
>
> (c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any
> F receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,
>
> G he shall be guilty of an offence.

[17] The essential ingredients of the offence under s. 11(c) are as follows:

(i) any person knowingly gives to an agent, or an agent knowingly
H uses with intent to deceive his principal, a document which his principal is interested;

(ii) the said document contains any statement which is false or erroneous or defective in any material particular;

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(iii) to his knowledge is intended to mislead the principal; and

(iv) as against OKT1, did abet the commission of the offence by Ramli bin Bakar, OKT2.

[18] The Anti-Corruption Act 1997 (Act 575) which is currently enforced has repealed the Prevention of Corruption Act 1961 ('Act 57') and Anti-Corruption Agency Act 1982: see s. 61 of Act 575. The charge under s. 11(c) of Act 575 is in *pari materia* with s. 4(c) of Act 57. The specimen charge under s. 4(c) of Act 57 may be found in "*Law of Bribery And Corruption in Malaysia With Cases and Commentaries*" by Jagir Singh who cited by way of illustration, the case of *Ibrahim Helmi Mohd Liki v. PP* [1984] 2 CLJ 46; [1984] 2 CLJ (Rep) 71. It is reproduced below:

> Framing charge.
>
> That you on ... at about ... at (state address) ... did knowingly give to an agent, namely, ... (or the agent did knowingly use with intent to deceive his principal) a document, to wit (specify the document) ... in respect of which the principal namely, (principal) ... is interested and which document contained statements which are false (or erroneous or defective) in material particulars, namely, (state particulars which are false) ... and which to you knowledge were intended to mislead the principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act 57).

Note: See the charge below under s. 4(c) which is reproduced from the case of *Ibrahim Helmi Mohd Liki v. PP* which appears at p. 72 of the case:

> That you on the 25th day of February 1979 at the office of the Majlis Perbandaran Kota Setar, Alor Setar, in the district of Kota Setar, in the State of Kedah, did knowingly give to an agent, *viz*,
>
> The Yang Dipertua, Majlis Perbandaran Kota Setar, Alor Setar, a document, to wit,
>
> > Perakuan kepada sokongan Menduduki Bangunan No. JBM K/P (PK) 44020 dated 25th February 1979
>
> in respect of which the principal namely, the Majlis Perbandaran Kota Setar, Alor Setar is interested, and which document contains statements which are false in material particulars, to wit.
>
> > Semua alat-alat kelengkapan Bomba yang disyorkan telah diuji serta didapati memuaskan

A which to your knowledge was intended to mislead the principal, and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act No. 57).

[19] I too have come across a Sessions Court's case at Kemaman *vide* B Case No. K61-1-03 (*Kemaman* case) where a JKR technician at Kemaman, Terengganu was charged at the instance of BPR or SPRM with an offence under s. 11(c) of Act 575. The facts in *Kemaman* case, including the document "Borang Permintaan Kepada Jabatan Kerja Raya Untuk Melaksanakan Kerja Bil. Pend. JKRK.P 2/2001 is identical with C Borang Permintaan Kepada Jabatan Kerja Raya Untuk Melaksanakan Kerja Bil. Pend. BW/116/05, exh. P3 in this case. Save that in *Kemaman* case the charge was not read with abetment under s. 20(1) of Act 575. By way of comparison and illustration, the charge in *Kemaman* case is reproduced below:

D Bahawa kamu, pada 31 Disember 2001, di Jabatan Kerja Raya Daerah Kemaman, dalam Daerah Kemaman, di dalam Negeri Terengganu, sebagai ejen Kerajaan Malaysia iaitu, Juruteknik Gred J22, di Jabatan Kerja Raya Daerah Kemaman, Kemaman, Terengganu dengan disedari, menggunakan dengan niat untuk memperdayakan prinsipal kamu, satu dokumen iaitu, Permintaan Kepada Jabatan Kerja Raya E Untuk Melaksanakan Kerja Bil. Pen. JKRK.P 2/2001, yang mana dengannya prinsipal kamu mempunyai kepentingan dan yang mengandungi butir-butir matan yang palsu, iaitu, "Saya memperakui bahawa keseluruhan kerja yang dibutirkan di dalam permintaan ini telah diperiksa dan didapati siap dilaksanakan dengan sempurna dan F memuaskan dan dengan ini menyokong pembayaran terakhir berjumlah RM64,207.88" dan pada pengetahuan kamu, adalah dimaksudkan untuk mengelirukan prinsipal kamu, dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 11(c) Akta Pencegahan Rasuah 1997 (Undang-Undang Malaysia Akta 575) dan boleh dihukum di bawah Seksyen 16 Akta yang sama.

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Analysis Of The Charge

[20] Before I analyse the charges in this case, let us examine the provision of para. (c) of s. 11 of Act 575. It has two limbs in its opening words. The first limb says "any person knowingly gives to an H agent". It is axiomatic that the expression "any person" is wide enough to include anyone. In this case, "any person" refers to OKT2 who is a class F contractor.

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[21] The second limb reads "an agent knowingly uses with intent to deceive his principal". An expression "agent" is defined in s. 2 of Act 575 which includes *inter alia*, an officer of a public body or an officer serving in or under any public body. And "public body" is also defined in s. 2 of Act 575 which includes *inter alia*, the Government of Malaysia. In the context of this case "an agent" refers to OKT1 who is a technician with Jabatan Kerja Raya, Seberang Perai Utara.

[22] Having scrutinised the charge against OKT1 the word "memberikan" (gives) is wrongly used in the charge as the said word "memberikan" (gives) is found in the first limb which is applicable to OKT2. The correct word to be employed is "menggunakan" (uses). The charge also omitted to mention that OKT1 is an agent of the Government of Malaysia, to wit, a technician with Jabatan Kerja Raya, Seberang Perai Utara. To prove that an accused person is an agent of the Government of Malaysia normally, a certificate under s. 47 of Act 575 is relied upon by the prosecution. There is no such s. 47 certificate to prove that OKT1 is (a) an agent of the Government of Malaysia, to wit a technician with Jabatan Kerja Raya, Seberang Perai Utara, and (b) OKT1's emoluments (ie, salary, allowance, etc). Instead the charge states that an agent of the Government of Malaysia is one Mazlina binti Pahazir, Pembantu Tadbir Kewangan, Jabatan Kerja Raya which is not an intendment of s. 11(c) to refer to her (Mazlina Pahazir). This is certainly inaccurate. Similarly the prosecution may argue that OKT1 is an agent of the Government of Malaysia is proved through the evidence of SP4 and SP3. This is to circumvent the provision of s. 47 of Act 575 which is specially enacted for this purpose.

[23] Further, the charge also totally failed to state the expression "uses with intent to deceive his principal" found in the second limb which is applicable to OKT1. This is an element of *mens rea* or mental element of the offence. Failure to incorporate the *mens rea* in the charge which form one of the essential ingredients of the offence is fatal. The charge is substantially defective.

[24] The importance of incorporating an expression involving *mens rea* or mental element which is an essential ingredient of the offence may be illustrated in *Aw Yang Kee Chuan lwn. PP* [1992] 2 CLJ 979; [1992] 1 CLJ (Rep) 398 where it was held the element of knowledge or reasonable belief must be stated in the charge as it was an essential ingredient of the offence. Without knowledge or belief, no offence is disclosed or the offence is not complete.

[25] We must bear in mind that the most important general principles of criminal liability is embodied in the Latin maxim '*actus non facit reum, nisi mens sit rea*' which means 'an act does not make a man guilty of a crime, unless his mind is also guilty'. Put simply, to be criminally liable, the *mens rea* and the *actus reus* must be concurrent: see *PP v. Mohamad Sabin* [2011] 4 AMR 205 at p. 255.

[26] Another essential element of the charge against OKT1 which is missing from the charge is the statement which is false in material particulars and it is not sufficient to merely state 'butir matan palsu', leaving behind the words false statement. In the context of this case, the false statement in para. F exh. P3 reads to wit, "Saya memperakui bahawa keseluruhan kerja yang dibutirkan di dalam permohonan ini telah diperiksa dan didapati siap dilaksanakan dengan sempurna dan memuaskan dan dengan ini menyokong pembayaran terakhir berjumlah RM59,336.46".

[27] Having regard to the above discussion, since the charge omitted to mention OKT1 is an agent of the Government of Malaysia, to wit, a technician with Jabatan Kerja Raya, Seberang Perai Utara, failed to incorporate the *mens rea* "uses with intent to deceive his principal", and the statement which is false in material particulars as stated in para. F exh. P3 the charge is therefore fundamentally defective and the defect is not curable under s. 422 of the Criminal Procedure Code. In *PP v. Mohd Azam Basiron & Anor* [2010] 9 CLJ 1, in discussing the charge, Suriyadi Halim Omar JCA (as he then was) said *inter alia*:

> For a *prima facie* case to be established successfully, in order for the defence to be called, the prosecution must prove the main ingredients of the charge.

[28] As against OKT2, the charge wrongly states an agent of the Government of Malaysia is one "Mazlina bt Pahazir, Pembantu Tadbir Kewangan yang bertugas di Jabatan Kerja Raya, Seberang Perai Utara", whilst the charge should read Jurutera Daerah, Jabatan Kerja Raya who is the head of department who authorised the payment of RM59,336.46. (See para. G in exh. P3).

[29] Further, both the charges against OKT2 and OKT1 do not disclose the falsity pertaining to the posts of the fence. According to Borang JKR-4 Pind. 1/83, a total number of the posts stated in items 16, 17 and 18 at p. 7 of exh. P3 were 215 posts valued at RM ... (to be determined by investigating officer), whilst having re-counted the same by SP3, there were only 60 posts valued at RM ... (to be determined by investigating officer). SP2 was a supervisor of the project

appointed by OKT2. SP2 said in evidence that, there were no new posts were supplied, save that the old existing posts were refurbished and repainted so that they would look new. Thus, the material evidence or facts disclosed do not support the charges: see *Lim Hong Siang v. PP* [2009] 2 CLJ 88.

[30] In the light of the above discussions, I am of the considered view that both OKT1 and OKT2's convictions and sentences could not stand as the charges were materially defective. I, therefore, set aside their convictions and sentences and allowed their appeals. Accordingly, OKT1 and OKT2 were acquitted and discharged.

Postscript

[31] As the facts in this case is substantially identical to the facts in the *Kemaman* case, I am of the considered view that the charge in the *Kemaman* case is more apt to follow, save that that words "butir-butir matan yang palsu" to be read "pernyataan yang palsu dalam butir-butir matan". Now guided by the charge in the *Kemaman* case, the specimen charge in *Law of Bribery And Corruption in Malaysia With Cases and Commentaries* by Jagir Singh, and the case of *Ibrahim Helmi Mohd Liki*, *supra*, a proper and correct charge against OKT1 may be read as follows:

1. Abd. Rashid Abdullah @ Abu, OKT 1

BAHAWA kamu dalam bulan Julai 2005, di Pejabat Jabatan Kerja Raya, Seberang Perai Utara, di dalam Daerah Seberang Perai Utara, dalam Negeri Pulau Pinang, sebagai ejen Kerajaan Malaysia iaitu Juruteknik di Jabatan Kerja Raya, Seberang Perai Utara, Daerah Seberang Perai Utara, Pulau Pinang telah bersubahat dengan Ramli bin Bakar, seorang kontraktor Kelas F, dengan disedari telah menggunakan dengan niat untuk memperdayakan prinsipal kamu, satu dokumen iaitu Borang Permintaan Kepada Jabatan Kerja Raya Untuk Melaksanakan Kerja JKR 4-Pind. 1/83 Bil. Pend. BW/116/05 bertarikh 18.4.2005 yang mana dengannya prinsipal kamu Jabatan Kerja Raya, Seberang Perai Utara mempunyai kepentingan dan yang mengandungi pernyataan yang palsu dalam butir-butir matan, iaitu, "Saya memperakui bahawa keseluruhan kerja yang dibutirkan di dalam permohonan ini telah diperiksa dan didapati siap dilaksanakan dengan sempurna dan memuaskan dan dengan ini menyokong pembayaran terakhir berjumlah RM59,336.46" dan pada pengetahuan kamu, adalah dimaksudkan untuk mengelirukan prinsipal kamu, yang mana kesalahan tersebut telah dilakukan akibat dari persubahatan kamu, dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 11(c) Akta Pencegahan Rasuah, 1997 (Akta 575) yang boleh dihukum di bawah seksyen 16 Akta 575 dan dibaca bersama seksyen 20(1) Akta yang sama.

[32] For OKT2, the correct and proper charge shall read as follows:

2. Ramli bin Bakar, OKT 2

BAHAWA kamu dalam bulan Julai 2005, di Pejabat Kerja Raya, Seberang Perai Utara, dalam Negeri Pulau Pinang, seorang kontraktor Kelas F, dengan disedari telah memberikan kepada ejen Kerajaan Malaysia iaitu Jurutera Daerah, Jabatan Kerja Raya, Seberang Perai Utara, satu dokumen iaitu Borang Permintaan Kepada Jabatan Kerja Raya Untuk Melaksanakan Kerja JKR 4-Pind. 1/83 Bil. Pend. B/116/05 bertarikh 18.4.2005 yang mana prinsipalnya, Jabatan Kerja Raya, Seberang Perai Utara mempunyai kepentingan mengenainya dan yang mengandungi pernyataan yang palsu dalam butir-butir matan iaitu butiran No. 14 dan 15 iaitu panjang pagar yang kamu membuat tuntutan dalam Borang JKR 4-Pind. 1/83 tersebut ialah 405 meter bernilai RM11,323.80, sedangkan ukuran sebenar panjang pagar itu ialah 162.2 meter dan butiran No. 16, 17 dan 18 mengenai tiang pagar yang dipasang, kamu membuat tuntutan dalam Borang JKR 4-Pind. 1/83 tersebut ialah berjumlah sebanyak 215 batang bernilai RM ... (ditaksirkan oleh pegawai penyiasat) sedangkan tiada sebarang tiang pagar baru dibekalkan, kecuali tiang pagar yang sedia ada sebanyak 60 batang yang dipasangkan dan dicatkan semula bernilai RM ... (ditaksirkan oleh pegawai penyiasat) yang pada pengetahuan kamu adalah dimaksudkan untuk mengelirukan prinsipalnya dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 11(c) Akta Pencegahan Rasuah 1997 (Akta 575) yang boleh dihukum di bawah seksyen 16 Akta yang sama.